



NEWSLETTER

Information and Privacy Commissioner / Ontario



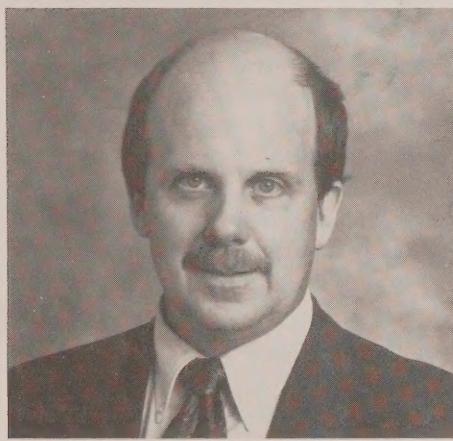
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Message from the Commissioner



Tom Wright

The enactment of the *Municipal Freedom of Information and Protection of Privacy Act*, 1989 has raised a number of issues for everyone who deals with the legislation. Local institutions, particularly co-ordinators and heads, are dealing with new organizational challenges as a result of this *Act*. Similarly, staff in the Office of the Information and Privacy Commissioner are learning daily about the special operating circumstances of municipalities, school boards and other local institutions.

Although our experience with the provincial legislation is considerable, and has been of benefit in resolving some of the issues related to the municipal *Act*, there are a number of situations that are unique to local circumstances. Some of these have appeared in the context of appeals, some as the result of privacy complaints, and some were brought to our attention during the province-wide training sessions which ended earlier this year.

The issues which have arisen during the course of more than 300 appeals under the municipal *Act* indicate a concern about the aspects of government which touch people's lives most closely -- those events which have impact on individuals, their neighbours, and their community.

A number of appeals involve records which contain information about by-law infractions such as where one individual has made a complaint about noise, garbage or an animal and the individual about whom the complaint has been made wants to know the identity of the complainant. A number of individuals have also been denied access to records about themselves held by local police departments. Processing these appeals has involved considerable discussion both within the IPC and with institutions about the particular application of the law enforcement exemption at the local level.

Other appeals relate to requests for records containing property information, including inspection and survey reports. The IPC has also received several appeals concerning requests for records related to the salaries and expense accounts of employees and elected officials, particularly for those associated with municipalities and school boards.

The investigation and mediation phases of each appeal must be exhausted before proceeding to the inquiry stage and the issuing of an order. So that municipalities and local agencies can have some orders on which to base their decisions regarding access, a specialized municipal team is working on a number of municipal appeals, which involve straightforward issues. Steady

progress is being made toward the issuing of numerous orders.

The IPC prefers to settle appeals through the mediation process, and 76 municipal appeals have been settled in this fashion this year. Appeals staff are spending a good portion of their time explaining the *Act* to both institutions and appellants, dealing with the questions and concerns that are a natural result of any new piece of legislation.

Our practices in dealing with appeals and privacy complaints under both *Acts* are reviewed regularly to ensure they are as effective and efficient as possible. Over the course of almost four years of provincial appeals, we have made a number of changes and improvements in the way appeals and complaints are dealt with. When a greater number of appeals have been closed, both through mediation and by order, we will be in a better position to conduct a more comprehensive review of our municipal appeals procedures. We will also be inviting comments on our procedures from institutions and appellants alike.

The municipal appeals team is becoming more familiar daily with the special circumstances and challenges faced by local agencies, both in the way they do their regular business and in the way the municipal *Act* impacts on these operations. Other departments of the IPC are also involved in ensuring that our understanding of and response to local issues is comprehensive and practical.

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Time Extension Appeals

Periodically, the Office of the Information and Privacy Commissioner/Ontario (IPC) is called upon to deal with time extension appeals. These appeals arise when an institution asks for more time to deal with an access request and a requester considers that such an extension is unreasonable.

Subsection 27(1) of the *Freedom of Information and Protection of Privacy Act, 1987* (the provincial *Act*) and subsection 20(1) of the *Municipal Freedom of Information and Protection of Privacy Act, 1989* (the Municipal *Act*) state that the head of an institution may extend the ordinary 30 day time limit for responding to an access request in the following situations:

- 1) When the request is for a large number of records resulting in an unreasonable interference with the operations of the institution;
- 2) When the request would require a search through a large number of records, resulting in an unreasonable interference with the operations of the institution;
- 3) When in order to comply with the request, consultations must take place with a person outside the institution and these consultations cannot reasonably be completed within the 30 day time limit.

When an institution intends to rely on any of these provisions, it must provide the requester with the reasons for this decision and the length of the proposed time extension. The institution must also decide on the length of the extension, within the original 30 day period. If the requester is dissatisfied with the time extension decision, he or she can appeal the decision to the IPC.

When such an appeal is received, it is given high priority since a decision by the Commissioner that a time extension is unreasonable will have no practical value if the extended time period has already passed.

Each time extension appeal is assigned to an Appeals Officer, who will immediately contact the institution's Freedom of Information and Privacy Co-ordinator to obtain information about the factual basis for the extension. The Appeals Officer will then convey the response received to the requester (who is now the appellant).

It is worth noting that approximately 80 per cent of all time extension appeals are settled in the mediation phase of the appeal process. Typically, the appellant will accept the explanation provided by the institution on the basis that an access decision will be issued by a specified date. In other cases, however, the appellant may not be satisfied with the institution's explanation. When this occurs, the appeal moves to what is known as the inquiry stage. The statutory basis for conducting an inquiry is found in sections 52 and 41 of the provincial and municipal *Acts*, respectively.

Because these provisions are very general in nature, the IPC has developed more detailed administrative procedures.

For appeals other than those related to time extensions, the Appeals Officer prepares a document known as the Appeals Officer's Report (the AOR) which is sent to both the appellant and the institution. The report sets out the facts of the case, describes the issues which the Appeals Officer considers to be most important and advises the parties of their right to make representations on these and other matters.

For time extension appeals, however, the IPC has adopted a less formal approach. Here, an AOR is not issued. Rather, the Appeals Officer sends a Notice of Inquiry in letter format to the institution. This document contains a series of questions which are tailored to the specific grounds claimed by the institution to support its time extension decision. A copy of the notice is also sent to the appellant who is invited to put forward any comments which might be helpful to the Commissioner.

The questions generally address such issues as:

- 1) The institution's reasons for believing that a time extension is required.
- 2) The total amount of time required to search, retrieve and prepare the record for disclosure.
- 3) The details of any external consultations which may be required.

It is important that the Commissioner obtain all relevant information in order to address all the issues raised in the appeal. To do so, some Notices of Inquiry may contain a number of questions. Any individual or organization who wishes to obtain a list of the questions that are typically posed to institutions may do so by telephoning the IPC's Communications Branch at (416) 326-3333.

Institutions may wish to keep these questions in mind when initially advising requesters that a time extension will be sought. In our experience, institutions which simply state, in their decision letters, that a time extension is required and then quote the relevant statutory provision will seldom persuade a requester that this decision is reasonable. Conversely, if more specific information can be provided at an early stage to justify the institution's position, many time extension appeals will be avoided.

Comments on IPC procedures for dealing with time extension appeals are welcomed. Please write to:

The Registrar, Appeals Department
Office of the Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario, M5S 2V1



Announcements

Tom Wright, Information and Privacy Commissioner/Ontario, is pleased to announce the following appointments:
Ann Cavoukian - Assistant Commissioner (Privacy), Tom Mitchinson - Assistant Commissioner (Access), and
Judy Hubert - Executive Director.

Ann Cavoukian Ph.D., has been re-appointed **Assistant Commissioner (Privacy)** with added responsibility for the IPC's Compliance Department. As Assistant Commissioner, Dr. Cavoukian is one of the agency's spokespersons on long-range policy issues related to the *Freedom of Information and Protection of Privacy Act, 1987* and the *Municipal Freedom of Information and Protection of Privacy Act, 1989*. She provides policy advice to the Commissioner on privacy issues such as data linkage through computer matching, workplace privacy issues, and the privacy implications of new telecommunications technologies.

Dr. Cavoukian joined the agency in 1988 as Director of Compliance. She previously held the position of Director of Corporate Resources for the CAW (Canadian Auto Workers) Legal Services plan for all CAW employees and their dependants. Dr. Cavoukian has held a number of positions with Ontario's Ministry of the Attorney General, including Chief of Research Services.



Tom Mitchinson, LL.B., is the new **Assistant Commissioner (Access)**. In this position, Mr. Mitchinson is a delegated decision-maker with responsibility for the issuance of orders under the access provisions of both the provincial and municipal *Acts*. With this appointment, he will also oversee the operation of the IPC's Appeals Department. He is one of the agency's key spokespersons on long-range access policy issues, and serves as a member of the agency's executive committee.

Mr. Mitchinson joined the agency in January 1988 as Director of Corporate Services, and was promoted to the position of Executive Director in January 1990. As Executive Director he was the chief administrative and operational officer of the agency, and was responsible for the overall direction of its seven departments, including Appeals, Compliance and Legal Services. Before joining the Commission, Mr. Mitchinson held a number of positions with the Legislative Assembly, including Director of Information Services.

Judy Hubert has recently joined the IPC as **Executive Director**. In this position, Ms. Hubert is responsible for the daily operation and administration of the agency. She serves as a member of the Executive Committee and has corporate responsibility for five of seven agency departments including Strategic Planning and Policy Development, Legal Services, Research Systems, Communications and Administration.

Before joining the IPC, Ms. Hubert held a number of positions with the Ontario Public Service. The most recent was Director, Policy and Planning Secretariat, Ministry of Government Services. She also brings valuable experience from the Ontario Cabinet Office, Management Board Secretariat and the Ministry of Health.



Upcoming Conferences

KEY CHALLENGES: Critical Issues Concerning Ontario's Access and Privacy Acts-October 24/25, 1991, L'Hôtel, Toronto

Don't delay! The deadline for registration is October 18th. The conference will address provincial, municipal and local access and privacy issues. This conference is co-sponsored by: Freedom of Information and Privacy Branch, Management Board Secretariat; Office of the Information and Privacy Commissioner/Ontario; and The Institute of Public Administration of Canada. For more information and to obtain a registration form, please contact Jane Serrano, 897 Bay Street, Toronto M5S 1Z7. Tel. (416) 923-7319; fax (416) 923-8994.

THIRD PARTY INFORMATION: Protecting and Releasing It - What You Need to Know - November 1, 1991, Ottawa Congress Centre

Notification and releasing of third party information continue as evolving issues and will be discussed in this day-long seminar. For more information, contact Riley Information Services Inc. at the address listed below.

ELECTRONIC DEMOCRACY: Government Information, Its Technologies and Public Policy-December 3/4, Ottawa Congress Centre

The Electronic Democracy Conference will focus on the latest developments from the public and private sectors on the dissemination of government information and the use to which information technology is being put.

For further information and registration, write to Riley Information Services Inc., 633 BayStreet, Suite 2207, Toronto M5G 2G4. Tel. (416) 593-7352; fax (416) 593-0249.

Commissioner's Message (cont'd)

The IPC's Research department has begun a series of focus projects which will address specific local practices. The result of these studies should be an improved understanding of how the *Act* impacts on those practices and the implications for institutions and the IPC. The projects will look at information-sharing practices between institutions; past practices regarding access to information before the *Act* came into effect; and all the privacy and access issues involving personal information as it relates to families, parents and children.

Research staff will be contacting a representative sample of institutions across the province to determine what they have done in the past, as well as their views on how the requirements of the *Act* can best be met in light of both those practices and the needs of institutions and their client groups.

Additionally, the Communications department is involved in developing a series of outreach opportunities across the province. I hope to meet with local elected representatives, and heads and co-ordinators of institutions in order to hear their comments, concerns and suggestions on how we might best work together. I also plan to meet with stakeholder groups and community associations, to ensure they have an opportunity to make their views known.

I believe strongly in the principles of both *Acts*, and have a firm commitment to their effective operation. At the same time, I believe we must address their requirements with common sense and, particularly in the case of local institutions, with a clear understanding of the issues which may play a part in ensuring the success of the *Municipal Freedom of Information and Protection of Privacy Act, 1989*.

Tom Wright

Compliance Investigation Summaries

With the next issue of the Newsletter, the IPC will be offering a new service to its readers. **Summaries of Investigations** will highlight compliance investigations undertaken by the IPC as part of its role in ensuring institutions comply with the privacy provisions of the *Acts*.

Reports from these investigations are being summarized for **Summaries of Investigations**, which will feature selected cases representing the variety of compliance investigations and conclusions. **Summaries of Investigations** will be distributed on a quarterly basis, beginning in January 1992.

IPC Public Outreach

As part of its mandate to provide public education about the *Acts*, the Office of the Information and Privacy Commissioner is embarking on a province-wide public outreach campaign.

We are actively seeking opportunities to address those interested in access and privacy issues, and invite you to call or write if your organization would like a speaker at an upcoming conference or workshop. Ideas and suggestions are welcome. Please call June Pierotti at the Office of the Information and Privacy Commissioner.

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